

EXECUTIVE ORDER

No. 86-10

WHEREAS, the Congress of the United States passed the Tax Reform Act of 1986 (hereafter H.R. 3838), which places an annual state ceiling on private activity bonds; and

WHEREAS, by this Executive Order I will proclaim the formula for allocation of the 1986 state ceiling for private activity bonds.

NOW, THEREFORE, I, Bruce Babbitt, Governor of the State of Arizona, do hereby proclaim and order as follows:

Section 1. Definitions.

(a) "Bond" or "Bonds" or "Private Activity Bonds" shall mean any obligation the interest on which is exempt from federal income tax under Sections 103(a) or 150(d) of the Code and which is:

- (i) a "private activity bond", as defined in Section 141(a) of the Code, or
- (ii) issued to finance the sports facility described in Section 1317(3) (N) of H.R. 3838;

but excluding:

- (1) obligations described in Section 146(g) of the Code;
- (2) obligations described in Section 146(h) of the Code;
- (3) obligations described in Section 146(i) of the Code;
- (4) obligations issued before August 16, 1986;
- (5) obligations issued to finance the facilities described in Section 1317 (30) of the H.R. 3838;

and further excluding any obligations as are not subject to the State Ceiling under law or regulation hereafter enacted.

- (b) "Business Day" shall mean between the hours of 8:00 a.m. and 5:00 p.m., Phoenix time, any day of the week other than a Saturday, Sunday or a day which shall be in the State a legal holiday or a day on which the Department is authorized or obligated by law or executive order to close.
- (c) "Carryforward Project" shall mean any Project receiving a carryforward allocation pursuant to Section 7 of this Executive Order.
- (d) "Certificate of Closing" shall mean the Certificate of Closing filed with the Department declaring that Bonds were issued and in the form adopted for such use by the Department.
- (e) "Code" shall mean the Internal Revenue Code of 1986.
- (f) "Confirmation" shall mean the Allocation Confirmation which confirms an allocation to a Project, and in the form adopted for use by the Department.
- (g) "Department" shall mean the Department of Commerce.
- (h) "Director" shall mean the Director of the Department and any other person or persons at the time authorized to act on behalf of the Department.
- (i) "Issued" shall mean delivered and paid for.
- (j) "Issuer" shall mean any entity or person which has authority to issue obligations the interest on which is exempt from federal income taxation pursuant to Sections 103(a) or 150(d) of the Code.
- (k) "Non-Urban Area" shall mean all areas of the State not within the boundaries of the Urban Cities.
- (l) "Notice of Intent" shall mean the Notice of Intent to be filed, as applicable, with the Department in the form adopted for use by the Department.
- (m) "Project" shall mean any construction, planned expenditure or other activity (including costs of issuance, capitalized interest and discounts) financed with Private Activity Bonds and located in the State, except as otherwise provided in Section 146(k) (2) of the Code.

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- (n) "Request" shall mean the Request for Allocation to be filed with the Department in the form adopted for use by the Department.
- (o) "Security Deposit" shall mean cash, a bank cashiers check, a surety bond, a letter of credit or other form of security approved by the Director in favor of the Department which is placed by an Issuer or user to secure or extend an allocation.
- (p) "State" shall mean the State of Arizona.
- (q) "State Ceiling" shall mean the dollar amount determined to be the dollar limit of the aggregate amount of Private Activity Bonds which may be issued in the State pursuant to Section 146(d) (1) of the Code for the calendar year 1986.
- (r) "State Purposes" shall mean Projects located within areas designated as Research Parks, as said term is defined in A.R.S. Section 9-1151 (10), Student Loan Bonds and any other Project which the Director determines will benefit the residents of the State as a whole and not for the benefit of a particular jurisdiction or region. "State Purpose" shall refer to any one of the Projects set forth above.
- (s) "Statewide Uses" shall mean State Purposes.
- (t) "Student Loan Bonds" shall mean "qualified student loan bonds", as defined in Section 144(b) of the Code, or "qualified scholarship funding bonds", as defined in Section 150(d) of the Code.
- (u) "Urban Cities" shall mean the following cities: Phoenix, Tucson, Tempe, Mesa, Scottsdale and Glendale. The area of each respective city of the Urban Cities shall be the boundaries of such cities as of January 1, 1986. "Urban City" shall refer to any one of the cities set forth above.
- (v) "Year" shall mean the calendar year.
- (w) "1986 State Ceiling" shall mean \$250,000,000.

**Section 2. Allocation.**

- (a) Subject to the provisions of Section 6 herein, I hereby allocate the 1986 State Ceiling in the amount of \$250,000,000 into four categories as follows:
 

(i) Urban Cities	\$40,000,000
(ii) Non-Urban Area	60,000,000
(iii) Student Loan Bonds	25,000,000
(iv) The sports facility described in Section 1317(3)(N) of H.R.3838	125,000,000
- (b) Allocations under categories (iii) and (iv) above are not subject to the provisions of Section 6 of this Order.
- (c) The allocation to the Non-Urban Area and Urban Cities shall be subject to allocation among Issuers by the Director on a first come, first served basis.
- (d) Subject to the provisions of Section 6 of this Order, allocations for Statewide Uses shall be apportioned to Issuers in a manner to be determined by the Director for Projects constituting State Purposes.
- (e) No Project shall be deemed to have been allocated any portion of the 1986 State Ceiling unless, in connection with the Project, the provisions of this Order have been substantially complied with. All references in this Order to certain times shall mean Phoenix time.
- (f) All or any part of any respective Confirmation to either the Urban Cities or the Non-Urban Area for which (i) Bonds have not been issued by 5:00 p.m., on the thirtieth day from the effective date of this Order, and evidenced by the filing of a Certificate of Closing with the Department, or (ii) Confirmations have not been extended pursuant to Section 10 hereof, shall be subject to the provisions of Section 6 hereof.

**Section 3. The Arizona Department of Commerce Designated as State Registry.**

- (a) The Department is hereby designated as the exclusive state registry for (i) Requests, (ii) recordation of Confirmations (whether outstanding or lapsed), (iii) Certificates of Closing, (iv) recordation of all requests for carryforward amounts for specific Projects, and (v) such other records required for the administration of this Order.

- (b) *The Department shall develop and maintain the following lists:*
- (i) *A list for the Urban Cities.*
  - (ii) *A list for the Non-Urban Area.*
  - (iii) *A list for Student Loan Bonds.*
  - (iv) *A list for the sports facility described in Section 2(a) (iv) hereof.*
  - (v) *A list for Statewide Uses.*
  - (vi) *A cumulative list showing the aggregate activity of the foregoing lists.*
- (c) *Requests and Confirmations issued under or pursuant to this Order shall be dated and numbered by the Director in the order received and issued, respectively, and each item shall be independently entered on the proper list. Each list shall be composed in a manner sufficient to show, at any time:*
- (i) *The dollar amount of Confirmations outstanding and not then lapsed.*
  - (ii) *The dollar amount of the remaining allocation then available.*
  - (iii) *The amount of Confirmations actually closed.*

**Section 4. Obtaining and Issuing Confirmations.**

- (a) *Subject to the provisions of Section 5 hereof, a Confirmation pertaining to an allocation of a portion of the 1986 State Ceiling apportioned to the Urban Cities, to the Non-Urban Area or to Student Loan Bonds or Statewide Uses must be obtained prior to the sale or issuance of such Bonds by (i) the filing by or on behalf of the Issuer with the Department of a Request, (ii) the filing with the Department of evidence of an inducement resolution or other official action taken by the Issuer in connection with the Project, and (iii) the issuance by the Director of a Confirmation. Requests filed by mail shall be deemed by the Director as filed with the Department at 5:00 p.m. the day the Request is actually received at the Department. All Requests received on the same date and at the same time shall be dated and numbered by lot and Confirmations to said Requests shall be issued in a manner selected by the Director.*
- (b) *A Request may be prepared and filed by the Issuer or on behalf of the Issuer by bond counsel or beneficial user.*
- (c) (i) *Except as provided in subsection 4(c) (ii), a Confirmation issued prior to 5:00 p.m., on the thirtieth day from the effective date of this Order, shall expire and no Issuer shall be deemed to have been allocated any portion of the 1986 State Ceiling unless the applicable Bonds have been issued and a Certificate of Closing has been filed (and not merely postmarked) with the Department no later than the thirtieth day from the effective date of this Order, provided, however, that such Confirmation may be extended beyond 5:00 p.m., on the thirtieth day from the effective date of this Order, as provided in Section 10 of this Order.*
- (ii) *Notwithstanding subsection (c)(i) of this Section, a confirmation issued for a Project to be funded in part with an Urban Development Action Grant to be made under Section 119 of the Housing and Community Development Act of 1974 (P.L.93-383; 88 Stat. 633) expires and no allocation is deemed to be made unless the applicable Bonds have been issued and a Certificate of Closing and evidence satisfactory to the Director of the commitment to make an Urban Development Action Grant with respect to such Project have been actually filed, not merely postmarked, with the Department no later than 5:00 p.m. on December 26, 1986.*
- (d) *Subject to the provisions herein, the Confirmation shall assure allocation for a dollar amount of such Bonds not in excess of the amount set forth in the Request.*
- (e) *The Director shall decline to issue Confirmations at such time as the aggregate amount of Bonds under all Confirmations previously issued and not expired, together with the proposed issue of Bonds as to which a Request has been received, would exceed the respective aggregate amount herein allocated to the Urban Cities, the Non-Urban Area, the Student Loan Bonds or the sports facility described in Section 2 (a)(iv) hereof. Upon expiration of a Confirmation or release of an allocation, the Director shall issue a Confirmation to the next numbered Request which is equal to or less than the then available portion of the 1986 State Ceiling or to the next numbered Request if such Request reduces the principal amount of such Request to an amount equal to or less than the then available portion of the 1986 State Ceiling.*
- (f) *The Director shall attempt to issue Confirmations within one Business Day of receipt and shall issue Confirmations in the order of receipt of fully and properly completed Requests within*

the limitations of Subsection 4(e) of this Order. The Director shall not be responsible for the return of Confirmations to the filing party. A confirmation will be available for pick-up at the Department after issuance of the Confirmation.

**Section 5. Restrictions on Confirmations.**

- (a) No Urban City Confirmation shall be effective if such Confirmation allocates an amount for a Project consisting primarily of Student Loan Bonds or the sports facility described in Section 2 (a) (iv) hereof.
- (b) No Non-Urban Area Confirmation shall be effective if such Confirmation allocates an amount for a Project located totally within the boundaries of any Urban City, except that a Non-Urban Area Confirmation issued after 5:00 p.m., on the thirtieth day after the effective date of this Order, will be effective for a Project located totally within an Urban City if such Project received an inducement resolution or was otherwise induced prior to January 1, 1985; Requests on behalf of such Projects for such Confirmations may be submitted prior to and after the thirtieth day after the effective date of this Order, such Requests will be allocated on a first come, first served basis and will have a priority over other Projects seeking an allocation pursuant to Section 6 (a) of this Order.
- (c) Statewide Uses allocations shall be subject to the following restrictions: (i) Confirmations shall be effective only if such Confirmation allocates an amount for a Project primarily constituting a State Purpose Project; or (ii) the Director may allocate Statewide Uses allocation to any Issuer for a Project consisting of a Research Park, as said term is defined in A.R.S. §9-1151 (10); or (iii) any allocation made with respect to a Statewide Use may be accompanied by a certificate executed by the Director. After first determining the accuracy thereof, the Director shall, when requested to do so, execute a certificate to the effect that "the Confirmation was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign." The Director is hereby empowered to require such oaths or affirmations as she shall deem necessary in order to issue such certificate.
- (d) In no event shall a Non-Urban Area Confirmation or Urban Cities Confirmation allocate to a Project, excluding State Purpose Projects, an amount greater than \$10,000,000, unless such Project received an inducement resolution or was otherwise induced prior to October 1, 1986. For purposes of this subsection, the amount of allocation to a Project shall also include any other 1986 State Ceiling allocation received by any Related Person to the Project. For purposes of this subsection "Related Person" shall have the same meaning as the term is defined in Section 147(a) (2) of the Code, except that all references to 50% shall be changed to 25%.

**Section 6. Allocations Obtained on or After the Thirtieth Day After the Effective Date of This Order Through 5:00 p.m., December 16, 1986.**

- (a) Any portions of the Urban Cities and the Non-Urban Area allocations for which Bonds have not been issued by 5:00 p.m., the thirtieth day after the effective date of this Order, other than Confirmations extended pursuant to Section 10 of this Order, shall be pooled and shall be subject to allocation among any Urban City or Non-Urban Area Issuer on a first come, first served basis through 5:00 p.m., December 16, 1986.
- (b) Obtaining and issuing Confirmations on or after the thirtieth day after the effective date of this Order through 5:00 p.m., December 16, 1986, shall occur as set forth in Section 4 of this Order, subject to the following restrictions and changes:
  - (i) A Confirmation issued on or after the thirtieth day after the effective date of this Order, through 5:00 p.m., December 16, 1986, shall expire and no Issuer shall be deemed to have been allocated any portion of the 1986 State Ceiling unless the applicable Issuer's Bonds have been Issued and a Certificate of Closing has been filed (and not merely postmarked) with the Department no later than thirty (30) days after the date of the Confirmation or the first Business Day after such thirtieth (30th) day if such thirtieth (30th) day is not a Business Day, or prior to 5:00 p.m., December 16, 1986, whichever first occurs; provided, however, that such Confirmation may be extended beyond 5:00 p.m., December 16, 1986, as provided in Section 10 of this Order;
  - (ii) Prior to the issuance of a Confirmation by the Director, the Director shall have received a Security Deposit in the amount of 1% of the principal amount set forth in the Request. The Security Deposit shall be forfeited to the Department in the event the Bonds are not issued prior to the expiration of the Confirmation or any extension. The Security Deposit shall not be required pursuant to this subsection if the direct beneficiary of the Bond proceeds is a County, City, Town or nonprofit entity or the Project will include Urban Development Action Grant financing.

**Section 7. Allocations After 5:00 p.m., December 16, 1986.**

- (a) Any portions of the Urban Cities and Non-Urban Areas allocations for which Bonds have not been Issued by 5:00 p.m., December 16, 1986, other than Confirmations extended pursuant to Section 10 of this Order, shall be pooled and shall be subject to allocation by the Director to

Projects consisting primarily of State Purpose Projects or other Projects eligible for a carry-forward allocation under the Code.

- (b) Obtaining and issuing a Confirmation after 5:00 p.m., December 16, 1986, shall occur as set forth in Section 4 of this Order, subject to the following restrictions and changes:
- (i) A Notice of Intent shall be filed on or before December 1, 1986, with the Department by any Issuer, bond counsel or user, with respect to Bonds subject to the 1986 State Ceiling and for any Project described in Sections 141(d) (2) (A), 141(d) (1) (B), 141(d) (1) (E), 141(d) (1) (F) of the Code and 1317 (3) (N) of H.R. 3838, which are expected to be issued in years subsequent to 1986 and consistent with the election provided for in Section 146(f) of the Code, to carry forward an unused portion of the 1986 State Ceiling. Such Notice of Intent shall be considered and Confirmations shall be issued to such Issuers on December 17, 1986, pursuant to an order of the Director and in a manner consistent with Section 146(f) of the Code and regulations thereunder, notwithstanding anything else in this Section. Any portions of the Urban Cities and Non-Urban Areas allocations for which Bonds have not been issued by 5:00 p.m., December 26, 1986, shall be allocated by the Director and Confirmations shall be issued to such Issuers subsequent to December 27, 1986. Issuers shall not file elections with the Federal Government under Section 146(f) of the Code until an allocation has been issued by the Department under this Section for the Bonds pertaining to a Project. Failure to file a Notice of Intent shall result in the exclusion of the Project from allocations to Issuers of any portion of the 1986 State Ceiling.
  - (ii) A Security Deposit equal to 1% of the principal amount set forth in the Notice of Intent shall be filed with the Director within five days of notification by the Director that the Project is eligible for a carryforward allocation. No Security Deposit is required if the direct beneficiary of the Bond proceeds is a County, City, Town, or nonprofit entity, the Issuer is a student loan corporation, or the sports facility described in Section 2 (a) (iv) hereof, the Project includes Urban Development Action Grant funding or the Confirmation is issued by the Director on or after December 26, 1986. The Security Deposit shall be forfeited to the Department in the event Bonds are not Issued within three years of payment of the deposit.

**Section 8. Principal Amount of Bonds Issued Less Than Confirmation.**

A Confirmation shall be effective as to Bonds Issued in lesser amounts than the principal amount set forth in the Confirmation, however, for Bonds Issued after 5:00 p.m., the thirtieth day after the effective date of this Order, if the principal amount of Bonds Issued is less than the principal amount set forth in the Confirmation, a fee of 1% of the difference between the Confirmation and the principal amount of the Bonds shall be paid to the Department upon filing of the Certificate of Closing, however, no fee shall be paid if the direct beneficiary of the Bond proceeds is a County, City, Town or nonprofit entity, or the Issuer is a student loan corporation, or the sports facility described in Section 2 (a) (iv) hereof, or the Project includes Urban Development Action Grant financing. Failure to make such payment within such 10-day period shall result in a retroactive cancellation of the allocation and the barring of the direct private obligor from any future allocations.

**Section 9. Registry Fee.**

The Department shall receive a nonrefundable registry fee of \$200 per million dollars for which a Confirmation is requested as a condition precedent to the issuance of a Confirmation.

**Section 10. Extension of Confirmations.**

- (a) Any Confirmation which will expire at 5:00 p.m., the thirtieth day after the effective date of this Order, may be extended for 10 days upon payment to the Department of a Security Deposit equal to 1% of the principal amount set forth in the Confirmation. The Security Deposit and request for extension shall be submitted to the Department prior to the expiration of the Confirmation. Successive extensions may be obtained upon submitting to the Department at least one day prior to the expiration of any extension an additional Security Deposit equal to 1% of the principal amount of the Confirmation for each extension requested. No more than one extension may be requested at one time. Except as provided in Section 10(b), all extensions granted pursuant to this subsection shall expire at 5:00 p.m., December 16, 1986. No Security Deposit shall be paid pursuant to this Section if the direct beneficiary of the Bond proceeds is a County, City, Town or nonprofit entity, the Issuer is a student loan corporation, or the sports facility described in Section 2 (a) (iv) hereof, or the Project includes Urban Development Action Grant financing.
- (b) Any Confirmation or extension of the Confirmation which will expire at 5:00 p.m., December 16, 1986, may be extended to 5:00 p.m., December 26, 1986, upon the filing with the Department on or prior to 5:00 p.m., December 16, 1986, a certificate certifying that the Bonds will be Issued prior to 5:00 p.m., December 26, 1986, and the posting with the Department of a Security Deposit equal to 2% of the principal amount set forth in the Confirmation. All ex-

tensions granted pursuant to this subsection 10(b) shall expire at 5:00 p.m. on December 26, 1986.

- (c) All Security Deposits posted with the Department pursuant to this Section shall be forfeited in favor of the Department in the event Bonds are not issued prior to the expiration of the extension.

Section 11. Effectiveness and Reliance.

This Order and allocations issued pursuant to this Order may be relied upon, to the extent herein provided, by issuers of Bonds, beneficiaries of the proceeds from and owners of such Bonds, with respect to all Bonds Issued during the period from and including August 16, 1986, to and including the date of issuance of a subsequent executive order of the Governor or enactment of legislation pertaining to allocation of the 1986 State Ceiling by the Legislature of the State with respect to the same subject, or to such subsequent date as is provided for in such subsequent executive order or law, or if no further Executive Order or law, to and including December 31, 1986. If necessary or desirable, this Order will be reissued or modified in view of any regulations, ruling or other act of the Department of the Treasury or subsequent enactment of Congress affecting the State Ceiling so as to accord the full protection contemplated by this Order to Bonds Issued or effective Confirmations issued prior thereto. Subject to the foregoing, this Order may be amended or reissued in amended form at any time.

Section 12. Form and Manner.

The Department may do all other things necessary or desirable to carry out the purpose of this Order, including the issuance of certifications regarding the aggregate amounts of allocations on Bonds.

Section 13. Limitation of Liability.

No pecuniary recourse shall be had for any claim based upon any obligation contained herein against the State or the Department or any of their past, present or future officers, directors, employees or agents.

Section 14. Effective Date.

This Order shall be effective as of the date H.R. 3838 is enacted into law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona

  
GOVERNOR

DONE at the Capitol in Phoenix on this sixth day of October, in the Year of Our Lord One Thousand Nine Hundred and Eighty-six and of the Independence of the United States of America the Two Hundred and Tenth.

ATTEST:

  
Secretary of State



CERTIFICATION

I, Bruce Babbitt, Governor of the State of Arizona, do hereby certify that the formula for allocation of the State Ceiling set forth in the Executive Order dated October sixth, 1986, was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.



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Bruce Babbitt